

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

ELBERT HARRIS,

Plaintiff(s),

No. C 08-2353 PJH

v.

FINAL PRETRIAL ORDER

CITY AND COUNTY OF SAN FRANCISCO,

Defendant(s).

Pursuant to Rule 16(e) of the Federal Rules of Civil Procedure, this final pretrial order is hereby entered and shall control the course of the trial unless modified by a subsequent order. The joint pretrial statement of the parties is incorporated herein except as modified by the court's ruling on the pretrial motions and objections.

I. MOTIONS IN LIMINE

- a. Plaintiff's motions in limine 1-4 are DENIED, without prejudice to renewing any motion as to particular evidence as it is proffered at trial.
- b. As plaintiff does not oppose defendant's motions in limine numbers 3-5, they are GRANTED.
- c. Defendant's motions in limine numbers 1 and 2 are GRANTED.

II. PRETRIAL PAPERS

For the most part, the parties pretrial papers, all jointly filed, are satisfactory. However, the parties shall meet and confer for the purpose of revising the following items no later than **October 1, 2009**:

- a. proposed instruction setting forth the claims and defenses;
- b. proposed voir dire which should be shortened to eliminate duplicative and redundant questions;
- c. individual verdict forms should be prepared jointly;

1 III. FURTHER BRIEFING REQUIRED

2 The only outstanding issue is with respect to the proper jury instruction on disparate
3 treatment. Plaintiff would like to allege both that the discrimination he experienced was the
4 sole motivation of defendant in taking adverse action against him and that it was a
5 substantial, but not sole, motivating factor. The parties shall brief the issue of whether
6 plaintiff is required to make an election between these two theories, what the appropriate
7 jury instructions on each theory should be, and whether there is some procedure the court
8 should follow depending on which theory is presented to the jury. The parties may either
9 rely on proposed instructions 10-12, or may submit revised proposed instructions with their
10 briefs. The briefs shall not exceed five pages in length and shall be filed simultaneously no
11 later than **October 1, 2009**. The court will issue a ruling before the commencement of trial.

12 IV. TRIAL SCHEDULE AND TIME LIMITS

13 Trial will commence on October 26, 2009, at 8:30 a.m. Court will be in session on
14 Monday, Tuesday, Thursday and Friday. Trial will take no longer than 6 days, and the
15 parties shall be afforded nine hours each for direct and cross examination of all witnesses.
16 Jury selection, opening statements, closing arguments and jury instructions will not be
17 counted against the allotted time.

18 V. DISMISSAL

19 Defendants Robert Thomas and Larry Bevan, named only in the third cause of
20 action, are DISMISSED WITH PREJUDICE.

21 IT IS SO ORDERED.

22 Dated: September 18, 2009



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24 PHYLLIS J. HAMILTON
25 United States District Judge
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